

AMENDED IN SENATE FEBRUARY 26, 2009

AMENDED IN SENATE DECEMBER 18, 2008

**Senate Resolution**

**No. 7**

**Introduced by Senator Leno**

**(Principal coauthors: Senators Kehoe and Steinberg)**

**(Coauthors: Senators Alquist, Calderon, Cedillo, Corbett, DeSaulnier, Hancock, *Liu*, Lowenthal, Pavley, Romero, Simitian, Wiggins, Wolk, and Yee)**

December 1, 2008

Senate Resolution No. 7—Relative to same-sex marriage.

1 WHEREAS, Article XVIII of the California Constitution  
2 mandates distinct procedures for revision and amendment of the  
3 California Constitution; and

4 WHEREAS, Article XVIII provides that, while a proposed  
5 amendment to the California Constitution can be accomplished  
6 through the initiative process, a proposed revision of the California  
7 Constitution must originate in the Legislature and must be approved  
8 by a two-thirds vote of each house of the Legislature before being  
9 submitted to the electors; and

10 WHEREAS, The California Supreme Court, in *Livermore v.*  
11 *Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that  
12 a revision is a substantial change to the “underlying principles” of  
13 the California Constitution or to the structure of our “basic  
14 governmental plan”; and

15 WHEREAS, Subdivision (a) of Section 8 of Article II of the  
16 California Constitution defines the initiative power as the ability  
17 to propose and pass statutory laws and constitutional amendments,  
18 but not constitutional revisions; and

1 WHEREAS, Article III of the California Constitution establishes  
2 a separation of powers between the legislative, executive, and  
3 judicial branches of California’s government; and

4 WHEREAS, Under the separation of powers doctrine established  
5 by Article III of the California Constitution, the courts have the  
6 ultimate authority to interpret and enforce the principle of equal  
7 protection, particularly where government discrimination on a  
8 suspect basis or the selective denial of a fundamental, *inalienable*  
9 right on a suspect basis is at issue; and

10 WHEREAS, The distinct procedures mandated for revision and  
11 amendment of the California Constitution, and the crucial  
12 deliberative role of the Legislature in any proposed revision of our  
13 Constitution, constitute key structural checks in the system of  
14 checks and balances mandated by Article III of the California  
15 Constitution; and

16 WHEREAS, The distinction between revision and amendment,  
17 and the distinct procedures assigned to each, in Article XVIII of  
18 the California Constitution, as well as the separation of powers  
19 mandated by Article III, are entitled to the highest respect as the  
20 expression of the people’s will; and

21 WHEREAS, The principle of equal protection, which prohibits  
22 unequal government treatment of historically targeted minority  
23 groups and ensures that laws enacted by a majority must apply  
24 equally to all people, is a foundational principle underlying our  
25 Constitution and our democratic system of government; and

26 WHEREAS, The requirement of equal protection of the laws  
27 plays an essential structural role in our basic governmental plan  
28 by providing a necessary check on the exercise of majority power  
29 and, in particular, by prohibiting the enactment of measures that  
30 facially single out a historically targeted minority group for adverse  
31 treatment and selective exclusion from an important right; and

32 WHEREAS, The Legislature is specially suited to examine and  
33 debate significant changes to the principles and structure that  
34 underlie the California Constitution, and is structured for precisely  
35 such a task; and

36 WHEREAS, Proposition 8, which was titled “Eliminates the  
37 right of same-sex couples to marry,” was put forward as an  
38 initiative measure and enacted by the electors by a bare majority  
39 of the vote in the November 4, 2008 general election; and

1 WHEREAS, Proposition 8 purports to amend the California  
2 Constitution to eliminate a fundamental, *inalienable* right only for  
3 a particular minority group on the basis of a suspect classification,  
4 while permitting the majority to retain that fundamental,  
5 *inalienable* right; and

6 WHEREAS, Proposition 8 would severely undermine the  
7 foundational principle of equal protection by establishing that any  
8 disfavored minority can be targeted to have its fundamental rights  
9 stripped away by a simple majority vote; and

10 WHEREAS, Proposition 8 would substantially alter our basic  
11 governmental plan by eliminating equal protection as a structural  
12 check on the exercise of majority power and by permitting  
13 majorities to force groups defined by suspect classifications to  
14 fight to protect their fundamental rights under the California  
15 Constitution at every election; and

16 WHEREAS, Proposition 8 would violate the separation of  
17 powers doctrine by stripping the courts of their core,  
18 constitutionally mandated function and traditional authority to  
19 enforce equal protection to prevent government discrimination  
20 against minority groups and the selective denial of fundamental,  
21 *inalienable* rights on suspect bases; and

22 WHEREAS, Proposition 8 would also violate the separation of  
23 powers doctrine by intruding on the vital role of the Legislature  
24 in vetting revisions to the California Constitution and by  
25 sidestepping the constitutionally required rigors of the legislative  
26 process; now, therefore, be it

27 *Resolved by the Senate of the State of California*, That the Senate  
28 opposes Proposition 8 because it is an improper revision, not an  
29 amendment, of the California Constitution and was not enacted  
30 according to the procedures required by Article XVIII of the  
31 California Constitution; and be it further

32 *Resolved*, that the Secretary of the Senate transmit copies of this  
33 resolution to the author for appropriate distribution.